

STATE OF SOUTH DAKOTA
DEPARTMENT OF HEALTH

BOARD OF MEDICAL AND OSTEOPATHIC EXAMINERS

IN THE MATTER OF:)	FINDINGS OF FACT,
DECLARATORY RULING)	CONCLUSIONS OF LAW, AND
REGARDING DELEGATING THE)	DECLARATORY RULING
TASK OF WRITING)	
OCCUPATIONAL THERAPY)	
ORDERS)	

This matter came before the South Dakota Board of Medical and Osteopathic Examiners (“Board”) through a petition filed by Board Staff, pursuant to SDCL 1-26-15 and ARSD § 20:78:02. The Petition was filed on February 10, 2017, and requested that the Board enter a declaratory ruling as to the issue noted below. On June 8, 2017, after due and proper notice, a hearing was held regarding the petition at which the Board heard oral testimony regarding the petition. Now, being otherwise informed as to all matters pertinent thereto, the Board enters the following Declaratory Ruling.

ISSUE

May an attending physician for a resident of a long-term care facility delegate the task of writing occupational therapy orders to qualified occupational therapists, and is this delegation allowed within the scope of practice of occupational therapy as defined by state law?

FINDINGS OF FACT

1. The United States Department of Health and Human Services (“HHS”) issued a final rule for Reform of Requirements for Long-Term Care Facilities. 81 Fed. Reg. 68688 (October 4, 2016). This final rule included language relating to the delegation of authority to occupational therapists to write therapy orders for patients in long-term care facilities. The final rule relating to occupational therapists can be found at 42 CFR § 483.30 and 42 CFR § 483.65.

2. 42 CFR §483 contains the requirements that an institution must meet to qualify to participate as a skilled nursing facility in the Medicare program, and as a nursing facility in the Medicaid program.

3. The stated intent of the HHS rules is “to reflect the substantial advances that have been made over the past several years in the theory and practice of service delivery and safety. These revisions are also an integral part of [HHS’s] efforts to achieve broad-based improvements both in the quality of health care furnished through federal programs, and in patient safety while at the same time reducing procedural burdens on providers.” *Reform of Requirements for Long-Term Care Facilities*, 81 Fed. Reg. 68688 (October 4, 2016).

4. People living in long-term care settings generally have complex chronic and acute medical conditions that require an interdisciplinary team to manage.

5. Physicians and occupational therapists work as a team to provide services to residents of long-term care facilities.

6. The attending physician for a resident in a long-term care facility has overall supervisory responsibility for the patient's treatment, and should be aware of all treatments ordered for long-term care patients to prevent counterproductive orders that are not aligned with patients' care goals and needs. The promulgation and carrying out of therapy orders can have a significant impact on the patient's quality of life.

7. The current prevailing practice in South Dakota is for the attending physician to write and sign therapy orders, or the attending physician will instruct the occupational therapist to draft therapy orders for the attending physician to review and sign.

8. The long-term care facility may adopt rules and procedures for the medical team, and attending physicians may issue standing orders or protocols regarding an individual patient's care. A protocol is a standardized plan for medical procedures or the administration of medications, with an outline of specific procedures and medications, by which certain tasks are delegated to South Dakota licensed healthcare professionals whose scope of practice allows the performance of such tasks.

9. Any finding of fact more appropriately labeled a conclusion of law is hereby re-designated as such and incorporated therein below.

CONCLUSIONS OF LAW

1. The Board has the authority under SDCL ch. 36-4, 1-26-15, and ARSD § 20:78:02 to issue declaratory rulings concerning the applicability and

interpretation of the Board's statutory and regulatory provisions and the practice of medicine and osteopathy in South Dakota.

2. No person may practice medicine or osteopathy without a license issued under SDCL ch. 36-4. SDCL 36-4-11. A physician may not delegate their ability to practice medicine or osteopathy to an individual not licensed to practice medicine or osteopathy in South Dakota.

3. An "occupational therapist" is a person licensed or permitted by the state to practice occupational therapy as defined by SDCL ch. 36-31. SDCL 36-31-1(3).

4. The scope of practice of an occupational therapist is defined in SDCL 36-31-1(4) as

the evaluation, planning and implementation of a program of purposeful activities to develop or maintain adaptive skills necessary to achieve the maximal physical and mental functioning of the individual in his or her daily pursuits. The practice of occupational therapy includes consultation, evaluation, and treatment of individuals whose abilities to cope with the tasks of living are threatened or impaired by developmental deficits, the aging process, learning disabilities, poverty and cultural differences, physical injury or disease, psychological and social disabilities, or anticipated dysfunction. Occupational therapy services include such treatment techniques as task-oriented activities to prevent or correct physical or emotional deficits or to minimize the disabling effect of these deficits in the life of the individual; such evaluation techniques as assessment of sensory integration and motor abilities, assessment of development of self-care and feeding, activities and capacity for independence, assessment of the physical capacity for prevocational and work tasks, assessment of play and leisure performance, and appraisal of living areas for the handicapped; physical agent modalities limited to the upper extremities to enhance physical functional performance, if certified in accordance with § 36-31-6; and specific occupational therapy techniques such as activities of daily living skills, designing, fabricating, or applying selected orthotic devices or selecting adaptive

equipment, sensory integration and motor activities, the use of specifically designed manual and creative activities, specific exercises to enhance functional performance, and treatment techniques for physical capabilities for work activities. Such techniques are applied in the treatment of individual patients or clients, in groups, or through social systems.

5. SDCL ch. 36-31 does not require an occupational therapist to provide occupational therapy services under the direction or supervision of a physician.

6. The change in federal regulations allows an attending physician of a patient in a long-term care facility to delegate to an occupational therapist the task of writing occupational therapy orders consistent with 42 CFR § 483.65. 42 CFR § 483.30.

7. Pursuant to 42 CFR § 483.65, occupational therapy services “must be provided under the written order of a physician...”

8. Considering the scope of practice of occupational therapists, attending physicians may use protocols to delegate to occupational therapists the task of writing occupational therapy orders for patients in long-term care facilities.

9. The South Dakota Board of Medical and Osteopathic Examiners does not have jurisdiction over reimbursement for medical services under federal law, and makes no findings or conclusions on those matters.

10. Any conclusion of law more appropriately designated a finding of fact is hereby re-designated as such and incorporated therein above.

[signature contained on following page]

Dates this 8th day of March, 2018.

SOUTH DAKOTA BOARD OF MEDICAL AND
OSTEPATHIC EXAMINERS

By: Walter O. Carlson, MD
President